

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Lily Solar Lessee, LLC

)

Docket No. EG19-__-000

**NOTICE OF SELF-CERTIFICATION OF
EXEMPT WHOLESALE GENERATOR STATUS**

Pursuant to the Public Utility Holding Company Act of 2005 (“PUHCA 2005”)¹ and Section 366.7 of the Commission’s regulations,² Lily Solar Lessee, LLC (“Applicant”) hereby submits this Notice of Self-Certification of Exempt Wholesale Generator (“EWG”) status.

I. CORRESPONDENCE AND COMMUNICATIONS

All communications and service related to this Notice of Self-Certification of EWG Status should be directed to, and the following should be included on the official service list for this docket:³

Rishi Balrup
Luigi Ferro
1875 K St. NW
Suite 567
Washington, DC 20006
Tel.: (202) 910-8107
Email: rishi.balrup@x-elio.com
luigi.ferro@x-elio.com

Daniel E. Frank
Allison E. Speaker
Eversheds Sutherland (US) LLP
700 Sixth St., N.W., Suite 700
Washington, DC 20001-3980
Tel.: (202) 383-0100
Email: daniel frank@eversheds-
sutherland.com
allison speaker@eversheds-sutherland.com

¹ Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594, at §§ 1261, *et seq.* (2005).

² 18 C.F.R. § 366.7 (2019).

³ Applicant respectfully requests that the Commission waive Rule 203(b)(3), 18 C.F.R. § 385.203(b)(3), to allow more than two persons to be designated to receive service.

II. DESCRIPTION OF APPLICANT AND FACILITIES

Applicant, a Delaware limited liability company, is a special purpose entity formed to operate the Lily Solar Facility (“Lily Solar Facility”), an approximately 70 MW solar facility currently under construction in Allendale County, South Carolina. The Lily Solar Facility will be interconnected with Dominion Energy South Carolina, Inc. (“DESC”).⁴ The Applicant has been assigned all of the rights, title and interest in and to all payments, receipts and revenues for power sales under a 21-year wholesale power purchase agreement (“PPA”) dated as of June 1, 2017 entered into between its affiliate, Lily Solar LLC (“Lily Solar”), and DESC. Pursuant to this PPA, DESC will purchase all of the energy, capacity and ancillary services produced by the Lily Solar Facility. The Lily Solar Facility does not include (and the Applicant does not own, operate or control) any transmission facilities other than limited and discrete interconnection facilities needed to connect the Facility to DESC’s transmission system. Lily Solar has filed a FERC Form 556 to self-recertify the Lily Solar Facility as a qualifying small power production facility.⁵

The Lily Solar Facility is currently under construction, with an anticipated commercial operation date no later than April 28, 2020, with test sales expected to begin in November 2019. Applicant currently owns no other electric generation or transmission facilities, and is not currently a “public utility” subject to the Commission’s jurisdiction.

The Applicant has entered into a 25-year lease of the Lily Solar Facility with its affiliate, Lily Solar, a South Carolina limited liability company, pursuant to the terms of a master lease

⁴ On July 12, 2018, the Commission authorized a proposed transaction whereby SCANA Corporation and South Carolina Electric & Gas Company (“SCE&G”) became wholly owned subsidiaries of Dominion Energy, Inc. in a transaction that closed on January 1, 2019. *Dominion Energy, Inc.*, 164 FERC ¶ 62,025 (2018). SCE&G remains its own BAA following the merger transaction. On June 14, 2019, DESC submitted a filing to reflect the company name change of South Carolina Electric & Gas Company to DESC. *See Dominion Energy South Carolina, Inc.*, Docket No. ER19-2139-000 (filed June 14, 2019) (tariff filing to reflect name change).

⁵ *See Lily Solar LLC*, Notice of Self-Recertification of QF Status, Docket No. QF15-430-002 (filed Feb. 27, 2019).

agreement. Applicant will be responsible for the day-to-day operation and maintenance of the Lily Solar Facility and all associated costs and expenses. Although Lily Solar will retain the PPA, Applicant will be responsible for power sales to DESC during the lease term and will become a “public utility” under the Federal Power Act and a “public-utility company” under PUHCA.⁶ As noted, Applicant and Lily Solar have entered into an agreement whereby Lily Solar has assigned to Applicant all of Lily Solar’s right, title and interest in and to all payments, receipts and revenues for power sales under the PPA. Applicant, in turn, will make fixed and variable lease payments (payments that vary with the gross revenues of Applicant) to Lily Solar during the term of the lease.

In connection with operating the Lily Solar Facility, the Applicant may from time to time engage in certain incidental services and activities which the Commission has previously found permissible for EWGs, including: facility development activities;⁷ wholesale power marketing;⁸ sale of ancillary services;⁹ and any other activity that the Commission has determined, or may in the future determine, to be within the permitted activities of an EWG. Applicant may also sell renewable energy credits consistent with the Commission’s limitation that an EWG may sell such credits only where they are associated with power produced from the Lily Solar Facility.¹⁰

⁶ Lily Solar is making separate filings for EWG status and authorization to make wholesale power sales in compliance with the Federal Power Act.

⁷ See, e.g., *Southern Electric Wholesale Generators, Inc.*, 66 FERC ¶ 61,264 (1994).

⁸ See, e.g., *Entergy Power Marketing Corp.*, 73 FERC ¶ 61,063 (1995).

⁹ See, e.g., *Sithe Framingham LLC*, 83 FERC ¶ 61,106 (1998).

¹⁰ See, e.g., *Madison Windpower, LLC*, 93 FERC ¶ 61,270 (2000).

III. SELF-CERTIFICATION OF APPLICANT'S EWG STATUS

The Commission's regulations require that an EWG be engaged directly, or indirectly through one or more affiliates, and exclusively in the business of owning or operating, or both owning and operating, one or more eligible facilities and selling electric energy at wholesale.¹¹ A sale of electric energy to a purchaser that resells the power, whether that resale is at wholesale or retail, is a "sale of electric energy at wholesale" as defined in Section 201(d) of the Federal Power Act.¹² The statute further specifies that an eligible facility "includes interconnecting transmission facilities necessary to effect a sale of electric energy at wholesale" which also "shall include a facility the construction of which has not been commenced or completed."¹³ Entities may self-certify their EWG status by demonstrating that they satisfy this definition.¹⁴

In accordance with Section 366.1 of the Commission's regulations,¹⁵ Applicant makes the following representations to certify that it satisfies the requirements for EWG status:

1. Applicant will be engaged directly and exclusively in the business of operating all or part of one or more eligible facilities and selling electric energy at wholesale. The Lily Solar Facility is an "eligible facility," as defined in Section 32(a)(2) of the Public Utility Holding Company Act of 1935 ("PUHCA 1935"), as incorporated by reference in 18 C.F.R. § 366.1,

¹¹ See 18 C.F.R. §§ 366.7 and 366.1. Section 366.1 of the Commission's regulations incorporates Sections 32(a)(2) through (4) and Sections 32(b) through (d) of the Public Utility Holding Company Act of 1935, 15 U.S.C. §§ 79z-5a(a)(2)-(4), 79z-5b(b)-(d) ("PUHCA 1935"), for purposes of determining whether an entity qualifies for EWG status.

¹² 16 U.S.C. § 824(d) (2012).

¹³ 15 U.S.C. § 79z-5a(a)(2); see *Katahdin Transmission, LLC*, 104 FERC ¶ 61,195 (2003) (granting EWG status to an entity that owned and leased a portion of interconnection facilities necessary to make wholesale power sales); *Termoelectrica U.S., LLC*, 102 FERC ¶ 61,019 (2003) (granting EWG status to an entity owning part of an interconnection line).

¹⁴ 18 C.F.R. § 366.7.

¹⁵ 18 C.F.R. § 366.1.

because it will be used for the generation of electric energy exclusively for sale at wholesale.¹⁶ As stated above, Applicant may engage in certain incidental services that are incidental to the wholesale electric energy sales from the Lily Solar Facility. The Commission previously has determined that these types of incidental activities do not violate the exclusivity requirement for an EWG to maintain its status as such.¹⁷

2. Consistent with Commission precedent defining “eligible facility” under Section 32(a)(2) of PUHCA 1935, Applicant will not own or operate any transmission facilities other than those interconnection facilities that are necessary to effect the sale of electric energy from the Lily Solar Facility exclusively at wholesale.

3. The Lily Solar Facility is not located in a foreign country, and Applicant will not make any foreign sales of power at retail. All electric energy generated by the Lily Solar Facility will be sold directly within the United States exclusively at wholesale.

4. With the exception of the Lily Solar, no portion of the Lily Solar Facility will be owned or operated by an electric utility company that is an “affiliate” or “associate company” of Applicant, as those terms are defined in Section 366.1 of the Commission’s regulations.

5. No rate or charge for, or in connection with, the construction of the Lily Solar Facility, or for electric energy produced by the Lily Solar Facility, was in effect under the laws of any State on October 24, 1992. As such, no certification or consent by any State is required.

6. Other than with Lily Solar, there are and will be no leasing arrangements involving the Lily Solar Facility and any public utility company or any associate company of any public

¹⁶ Concurrently with this Notice, Applicant is filing an application for market-based rate authority pursuant to 18 C.F.R. §§ 35.3(a) and 35.36, *et seq.*

¹⁷ *See supra* nn. 7 - 10.

utility company.¹⁸

IV. NOTICE

A copy of this Notice of Self-Certification of EWG Status concurrently is being served on the South Carolina Public Service Commission.

V. CONCLUSION

Based on the foregoing, Applicant respectfully requests that the Commission accept this Notice of Self-Certification of EWG Status.

Respectfully submitted,

/s/ Daniel E. Frank

Daniel E. Frank

Allison E. Speaker

Eversheds Sutherland (US) LLP

700 Sixth St., N.W., Suite 700

Washington, DC 20001-3980

Tel.: (202) 383-0100

Email: daniel frank@eversheds-sutherland.com

allison speaker@eversheds-sutherland.com

Counsel for Lily Solar Lessee, LLC

August 30, 2019

¹⁸ Such lease arrangements with a public-utility company and involving a facility used exclusively to generate electricity for sale exclusively at wholesale satisfy the “and selling” requirement for EWG status. *DTE Pontiac North LLC*, 121 FERC ¶ 61,037, at P 7 (2007).